S.B.CIVIL WRIT PETITION NO.1165/1995

Gautam
v.
State of Rajasthan & Ors.

DATE OF ORDER :: 7th February, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

None present, for the petitioner.
Mr. B.L.Tiwari, Deputy Government Advocate.

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The petitioner entered in the services of the Department of Irrigation of Government of Rajasthan w.e.f. 1.3.1971 being appointed as casual work charged employee. Under an order dated 1.8.1982 permanent status was conferred to the petitioner w.e.f. 1.4.1982 in accordance with the Work Charged Employees Rules, 1964 (hereinafter referred to as “the Rules of 1964”). By an order dated 27.12.1984 the petitioner was transferred from Irrigation Division, Banswara to the office of Executive Engineer, Mahi Project (Kokia) in district Banswara. On acquiring the age of retirement i.e. of 58 years the petitioner stood retired from service on 10.9.1982 afternoon as per Chapter-III (para 13) of Mahi Standing Orders. The petitioner submitted certain representations to the respondents for continuing him in service upto the age of 60 years and also in alternative for grant of pensionary benefits. No response was given to the petitioner, therefore, he approached to the Collector (Vigilance), Banswara for redressal of his grievance. The Chief

Engineer, Mahi Bajaj Sagar Project, Banswara under a communication dated 11.2.1994 conveyed to the Collector (Vigilance), Banswara that the petitioner was working on work charged basis, therefore, he was rightly retired on achieving the age of 58 years and further that the retiral benefits those are contributory provident fund and gratuity were already paid to the employee. In view of the communication dated 11.2.1994 the Collector (Vigilance), Banswara closed the complaint proceeding that was initiated at the instance of the petitioner. The petitioner for redressal of his grievance with regard to grant of pension and other retiral benefits has filed the instant petition for writ.

It is averred in petition for writ that the petitioner being employed in the Department of Irrigation in the year 1971 is entitled for getting pension in accordance with the Rules of 1964.

In reply to the writ petition a stand is taken by the respondents that no provision for grant of pension is there in Mahi Bajaj Sagar Standing Orders and as such the petitioner is not entitled for getting any pension. It is also averred that the petitioner himself has not filed any pension form, therefore, he is required to be estopped from claiming pension.

Heard counsel for the respondents and perused the record.

It is not in dispute that the appointment was given to the petitioner in the year 1971 in Department of Irrigation and he was declared permanent as per Rule 3(3) of the Rules of 1964 w.e.f. 1.4.1982. The petitioner thereafter was transferred to Mahi Project under an order dated 27.12.1984. The respondents retired the petitioner from service under the Rules of 1964 and also as per Chapter-III of the Mahi Standing Orders. Under Rule 22-A of the Rules of 1964 a permanent work charged employee on completion of 10 years of service is entitled for either contributory provident fund or pension. It is not clear from pleadings as to whether the workman ever opted for pension, however, if the petitioner has opted for pension then he is certainly entitled to get pensionary benefits under the Rules of 1964 as the same are also applicable for the work charged employees of Mahi Bajaj Sagar Project. For the sake of argument even if it is assumed that the Rules of 1964 are having no application for the employees of Mahi Bajaj Sagar Project then too the petitioner being a work charged employee of the Irrigation Department is required to be governed by the Rules of 1964 as he was simply transferred to Mahi Bajaj Sagar Project from the Irrigation Department.

In view of whatever discussed above, this petition for writ is disposed of with a direction to the respondents to consider the pension case of the petitioner, if he has opted for pension in accordance with Rule 22-A of the Rules of 1964. If the petitioner has not opted for pension under the Rules of 1964 and if yet any opportunity is available in accordance with law to opt the pensionary benefits, same be accorded to him.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.